

## **RESOLUTION #145-12**

### **AGREEMENT TO SETTLE DISPUTE WITH HUNTERDON ART MUSEUM**

**WHEREAS**, the Hunterdon Art Museum ("MUSEUM") owns property on Lower Center Street, adjacent to the South Branch of the Raritan River on which is located an historic mill which is used as an art museum; and

**WHEREAS**, over the years the South Branch of the Raritan River has overflowed its banks causing damage to the MUSEUM property and nearby properties; and

**WHEREAS**, The State of New Jersey, Division of Dam Safety, made demands upon the MUSEUM and other adjoining property owners that they either reconstruct the dam and the nearby dike, or that the dam be eliminated; and

**WHEREAS**, in order to assist the MUSEUM and adjoining property owners remedy this problem the TOWN, on behalf of the MUSEUM and adjoining property owners, secured from the State of New Jersey, Department of Environmental Protection a grant in the amount of \$914,000 to reconstruct portions of the dam and the dike along the MUSEUM's side of the River; and

**WHEREAS**, in order to design the reconstruction of the dam and the dike the TOWN hired an engineer highly experienced in the construction and reconstruction of dams, who prepared a set of plans to reconstruct the dam and the dike in a manner consistent with the terms of the grant; and

**WHEREAS**, after that design was completed, the MUSEUM requested that the engineer prepare for it plans for additional work in order to improve the patio and parking area of the MUSEUM, which design work included extending the "training wall" along the edge of the South Branch an additional distance to reduce the potential for continued erosion, adding fill and drainage features and other work that improved the MUSEUM's property; and

**WHEREAS**, discussions were held between the TOWN and the MUSEUM about the additional costs that would be incurred by virtue of work requested by the MUSEUM and the MUSEUM agreed to pay the cost of work that benefited the MUSEUM property; and

**WHEREAS**, the reconstruction of the dam and dike has been completed; and

**WHEREAS**, a dispute arose between the parties as to how to apportion the cost of the work performed; and

**WHEREAS**, the only remaining issues are the payment by the MUSEUM to the TOWN of the amount agreed to for the additional work, \$179,947.73; the supplying by the MUSEUM to the TOWN of a mortgage to secure a guaranty being given by the Town to the State of New Jersey for a loan to be obtained by the MUSEUM to do certain improvements; the request by the MUSEUM for a letter of support by the TOWN for the patio project the MUSEUM wishes to construct; and the supplying of copies of invoices from the TOWN to the MUSEUM

**WHEREAS**, the TOWN desire to settle and resolve the dispute between it and the MUSEUM and believes that there is a simple, prompt and fair way to resolve that dispute which would involve each party agreeing to do in two weeks what they are already willing to do;

**WHEREAS**, the TOWN believes this settlement will allow the taxpayers to recoup the money advanced by the TOWN on behalf of the MUSEUM and will let both the taxpayers and the donors to the MUSEUM know that their hard-earned dollars are not being spent on additional lawyers' and engineers' fees.

**NOW THEREFORE BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF CLINTON, HUNTERDON COUNTY AS FOLLOWS:**

**The Mayor and Council are willing to resolve the dispute with the MUSEUM on the following terms:**

1. On Tuesday, September 25, 2012, the Museum delivers to the Town: (a) a check payable to it in the amount of \$179,947.73; and (b) a second mortgage on the Museum property in an amount sufficient to cover the entire loan proceeds to be prepared by the Museum and contain commercially reasonable terms.
2. On that same date, upon receipt of items 1.a. and 1.b. above, the Town will provide to the Museum: (a) a letter to the Planning Board indicating the Town's support for the Museum's project; (b) a letter to the DEP notifying it that the Town consents to having the DEP resume servicing the loan; and (c) another copy of the invoices documenting the Town's expenses incurred in connection with the Dam & Dike Restoration Project.
3. The parties will thereafter promptly exchange mutual releases and a right of way agreement in the form to be agreed to by the respective attorneys.